

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,  
W.A. DREW EDMONDSON, in his  
capacity as ATTORNEY GENERAL  
OF THE STATE OF OKLAHOMA,  
et al.

Plaintiffs,

V.

TYSON FOODS, INC., et al.,

Defendants.

No. 05-CV-329-GKF-SAJ

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEBRUARY 19, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Mr. Drew Edmondson  
Attorney General  
Mr. Robert Nance  
Mr. Daniel Lennington  
Ms. Kelly Hunter Burch  
Mr. Trevor Hammons  
Assistant Attorneys General  
313 N.E. 21st Street  
Oklahoma City, Oklahoma 73105

Glen R. Dorrough  
UNITED STATES COURT REPORTER

1 THE COURT: Just one second. Because we have daily  
2 copy, General, we'll take a short break here. I'm going to  
3 stay here on the bench to allow the copy to be sent to the  
4 transcriptionist. We'll let's take a five minute break. I'm  
5 going to stay here on the bench and we'll make that  
6 transcriptionist run at this time.

7 (Recess.)

8 CLERK: We're back on the record in the State of  
9 Oklahoma vs. Tyson.

10 THE COURT: The witness will be sworn, please.

11 CANON MILES TOLBERT

12 Called as a witness on behalf of the plaintiffs, being first  
13 duly sworn, testified as follows:

14 THE COURT: State your name for the record please,  
15 sir.

16 THE WITNESS: My name is Canon Miles Tolbert.

17 THE COURT: Attorney General Edmondson.

18 MR. EDMONDSON: Your Honor just threw me off. That  
19 was my first question there.

20 DIRECT EXAMINATION

21 BY MR. EDMONDSON:

22 Q. Mr. Tolbert, please, would you give us your educational  
23 background and employment prior to now?

24 A. Yes. I was raised in Oklahoma City, attended schools here  
25 in Oklahoma. I have an undergraduate degree in political

1 used to -- money from that has been used to replace septic  
2 tanks and to do these various measures designed to improve land  
3 use practices.

4 Q. Has the State of Oklahoma engaged in any litter hauling?

5 A. We have not engaged in litter hauling but we have  
6 subsidized litter hauling.

7 Q. Let me invite your attention to State's Exhibit 47. Could  
8 you tell me, please -- do you have that?

9 A. If it didn't drop to the ground, yes, I do, sir.

10 Q. How does the incentive program work?

11 A. There are -- the State pays a subsidy of approximately \$10  
12 a ton to move litter out of the Illinois River Watershed.

13 There's also a tax credit that's available for the same  
14 purpose. And the litter is not just hauled out of the  
15 watershed willy-nilly. We put restrictions on where it can be  
16 taken in order to protect the area that receives it.

17 Q. Are there any prohibitions associated with that program as  
18 well?

19 A. There are.

20 Q. What would that be?

21 A. Well, Exhibit 47 shows the areas where the litter that's  
22 taken out of the watershed cannot go, either because of a  
23 concern about nutrients in those watersheds or because of the  
24 vulnerability of the groundwater there.

25 Q. Do we, as a state, list the water areas that are impaired

1 A. Well, as much as we -- this is a problem that is -- has  
2 its origins on the other side of the border in Arkansas.  
3 Eighty percent of the poultry houses are in Arkansas. There  
4 is -- our ability to do something in Oklahoma in state court or  
5 under state law or under state regulation is very limited, and  
6 we could not solve the problem if we were forced to rely  
7 entirely or solely on our state authorities.

8 Q. And in your opinion, how serious is this problem?

9 A. I consider it a very serious problem.

10 Q. Could you tell me, please, why you sued the integrators,  
11 the companies, instead of the growers, the farmers?

12 A. Because it is the integrators' waste.

13 Q. And what do you base that on?

14 A. The feed that supplies these birds is brought into the  
15 watershed and owned by the integrators. The birds that eat  
16 that feed are owned -- brought into the watershed and are owned  
17 by the integrators. And when nature takes its course and feed  
18 enters bird, what comes out the other side is the result of the  
19 integrators' actions.

20 Q. To your knowledge, has that degree of control by the  
21 integrators ever been recognized in a court decree?

22 A. It has.

23 Q. I invite your attention to State's Exhibit 41. Could you  
24 tell me what that is?

25 A. Yes. This is the decree that resolved the City of Tulsa

1 case. And by -- I should say more formally it's the case that  
2 was brought by the City of Tulsa and the TUMA against a number  
3 of poultry companies and an Arkansas municipality over water  
4 quality problems in the Eucha-Spavinaw watershed, which is  
5 Tulsa's water supply.

6 Q. Do you know whether there was ever a moratorium on land  
7 application leading up to or subsequent to this order?

8 A. Subsequent to this order. What the order did was require  
9 that land application in that watershed not occur until there  
10 were new plans written based on a newly adopted phosphorus  
11 index. And so from the summer of 2003 when that was  
12 implemented, well into and through much of the next year, there  
13 was a moratorium on land application in that watershed.

14 Q. To your knowledge, were any growers or farmers in that  
15 case?

16 A. I don't believe that there was a single grower or a single  
17 farmer in that case.

18 Q. So the named defendants were the companies?

19 A. The only -- the named defendants were the companies. The  
20 order bound them and the result was a moratorium, an effective  
21 moratorium, and then an effective change in how it is that  
22 litter was managed in that watershed.

23 Q. And in your opinion, will the risks associated with these  
24 bacterial levels be substantially reduced if the injunction is  
25 granted?